

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	2:98-cr-00171-GEB
)	
Plaintiff,)	
)	<u>SENTENCING DECISION</u>
v.)	<u>FOLLOWING REMAND</u>
)	
DANIEL ROSEN, HELMI MANSOUR and)	
AYMAN MANSOUR,)	
)	
Defendants.)	

The Ninth Circuit remanded sentencing in this action for further proceedings in light of United States v. Booker, 543 U.S. 220 (2005), and United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc). Ameline requires a district court on remand to consider whether the sentence previously imposed "would have been materially different had the district court known that the Guidelines were advisory. . . ." 409 F.3d at 1084. Following remand, I issued an Order to the parties on August 19, 2005, in which their views were requested on the issue. On December 19, 2005, Defendants Daniel Rosen ("Rosen") and Ayman Mansour filed Ameline briefs, in which both Defendants assert their sentences would have been materially different had the guidelines been advisory. On January 17, 2006, Helmi Mansour

1 filed a "Notice Opting Out of Ameline Re-sentencing."

2 To determine the remand issue, I have considered the
3 following: both Defendants' Presentence Investigation Reports ("PSR");
4 the transcripts of Defendants' sentencing hearings; and Rosen's and
5 Ayman Mansour's respective Ameline Briefs.

6 Each Defendant's re-sentencing request is discussed below.
7 Defendant Rosen

8 Rosen was convicted on all twenty-three counts charged
9 against him, including conspiracy to distribute list I chemicals under
10 21 U.S.C. § 846, 841 (d)(1). Rosen's Sentencing Guideline range was
11 determined to be 188-235 months, and the probation officer recommended
12 Rosen be sentenced at the bottom of that range. (Rosen's PSR at ¶
13 85.) As revealed at trial and in his PSR, Rosen's business generated
14 millions of dollars in proceeds from pseudoephedrine sales.

15 At Rosen's sentencing hearing held on October 13, 2000, the
16 government moved for an upward departure from the Guideline range and
17 Rosen moved for a downward departure. I was not persuaded by the
18 government's motion, and declined to grant Rosen's downward departure
19 motion because during his trial testimony, Rosen attempted to "dup[e]
20 the jury" by "feign[ing] ignorance of the truth" of the charges
21 against him. (Sentencing Hr'g Tr. at 52, 56, Oct. 13, 2000.)

22 During Rosen's sentencing hearing, I referenced sentencing
23 factors in 18 U.S.C. § 3553(a), specifically "the need for the
24 sentence to reflect[] the seriousness of the offense[s,]" "deterrence
25 as far as other members of society is concerned," and the fact that
26 Rosen's crime fostered violence. I concluded these factors supported
27 a sentence at the top of the Guideline range. (Id. at 57-59.)
28 However, I noted that § 3553(a) calls for "a sentence sufficient but

1 not greater than necessary to comply with the purposes set forth in
2 the section.” (Id. at 59.) I then considered the “aspect of the
3 deterrent factor which . . . focuses on whether a sentence is going to
4 deter the defendant in front of me[,] . . . the factor that concerns
5 protecting the public from further crimes of the defendant[,]” and
6 “the disruptive impact . . . incarceration [would] have on the
7 defendant’s personal life[,]” and found these factors supported a
8 sentence at the bottom of the Guideline range. (Id. at 57-59.) I
9 then sentenced Rosen at the bottom of that range.

10 The record reveals I treated Rosen’s Guideline range as more
11 than just one of several factors to be considered during sentencing,
12 United States v. Zavala, 443 F.3d 1165, 1171 (9th Cir. 2006), and did
13 not “attempt to find the most reasonable sentence for [Rosen] within
14 the territory of all possible reasonable sentences.” Id. at 1170
15 (emphasis added). But consideration of the sentencing record and
16 bearing in mind that the “Guideline calculation” is to be accorded no
17 “greater weight than [what is to be] accord[ed] the other § 3553(a)
18 factors[,]” I have decided that even sentencing Rosen under the
19 advisory guidelines would not result in a materially different
20 sentence than what he received because of how I weighed the § 3553(a)
21 factors discussed during his sentencing. Id. at 1171.

22 Ayman Mansour

23 Ayman Mansour was convicted on the three counts charged
24 against him, including conspiracy to distribute list I chemicals under
25 21 U.S.C. § 846, 841 (d) (1). Ayman Mansour’s Sentencing Guideline
26 range was determined to be 135-168 months, and the probation officer
27 recommended Ayman Mansour be sentenced at the top of that range.
28 (Defendant Mansour’s PSR at ¶ 87.)

1 At his sentencing hearing held on February 2, 2001, I
2 declined to grant Ayman Mansour's motion for downward departure
3 because I felt he had been dishonest throughout his trial and
4 sentencing proceedings. (Sentencing Hr'g Tr. at 74, Feb. 1, 2001.) I
5 also expressed discomfort with the recommendation in the PSR that
6 Ayman Mansour be sentenced at the top of his Guideline range, stating
7 "I have a problem going there. . . . His sentencing range involves a
8 lot of years." (Id. at 73.)

9 During the sentencing hearing, I focused primarily on the
10 deterrence factor in § 3553(a). See United States v. Mix, 442 F.3d
11 1191, 1197 (9th Cir. 2006) ("A district court is not required to refer
12 to each factor listed in § 3553(a)."). Although I was uncertain how
13 much time would be necessary to deter him from further criminal
14 activity, I explained that a sentence at the bottom of the range,
15 roughly eleven and one-fourth years, "is a long time for an individual
16 to serve in prison. It gives the individual a lot of time to think
17 about the mistakes he made in violating the law." (Id. at 74.) I
18 also considered Ayman Mansour's background, as was evidenced when I
19 stated "[t]he only prison time he has served in the past is one day.
20 He's never been to jail before except for one day." (Id. at 73.) In
21 light of these two factors, I ultimately determined that a "sentence
22 [at the bottom of the Guidelines] would serve the purposes of 3553."
23 (Id. at 74.)

24 The record reveals I treated Ayman Mansour's Guideline range
25 as more than just one of several sentencing factors and that I did not
26 heed present law that accords the "Guideline [range] calculation" no
27 "greater weight than [is] accord[ed] the other § 3553(a) factors."
28 Zavala, 443 F.3d at 1171. Nor did I "attempt to find the most

1 reasonable sentence for [Ayman Mansour] within the territory of all
2 possible reasonable sentences." Id. at 1170 (emphasis added). But
3 even under the post-Booker and Ameline sentencing regimen, Ayman
4 Mansour's sentence would not be materially different; Ayman Mansour
5 was involved with the operation of "front" business for the storage
6 and shipping of pseudoephedrine, and the § 3553 factors discussed
7 during his sentencing hearing, as well as the factors considering the
8 seriousness of the offense, promoting respect for the law, and
9 providing just punishment for the offenses, reveal his sentence was
10 appropriate and would not be materially different if imposed again.

11 IT IS SO ORDERED.

12 Dated: June 5, 2006

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14 /s/ Garland E. Burrell, Jr.
15 GARLAND E. BURRELL, JR.
16 United States District Judge
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